

October 5, 2005

Pat Murdo, Lead Staff
Economic Affairs Interim Committee
Legislative Services Division
Capitol Station
Helena, Montana 59620

Re: Comments on SJ 35.

Dear Ms. Murdo;

I am pleased to be invited to submit these comments on Senate Joint Resolution 35 on behalf of the Montana Pharmacy Association (MPA) to you and the EAIC. MPA would like to be considered a member of the work group. I will be the contact person. Unfortunately, I will not be able to attend the October 12 work session due to prior commitments. I'll catch up as best I can. We would like to contribute to the SJ 35 Study in certain key areas of particular concern at this time to the association. We will do so as the interim study proceeds.

The Montana Pharmacy Association is a professional organization incorporated in this state in 1939. In 2005 the MPA had 475 members, consisting of pharmacists and pharmacy technicians in all practice settings, U of M Skaggs School of Pharmacy faculty and students, and Associate members from the pharmaceutical industry. Obviously, there is a great interest and stake on the part of MPA in the Board of Pharmacy, which licenses the individuals, and regulates the profession in order to ensure that the public health, welfare and safety of all Montanans is protected.

This public health function is central and critical to the Board of Pharmacy. You have posed some very provocative and stimulating questions to the EAIC and the interest groups involved in the SJ 35 Study. One of them had to do with whether a particular board is organized to protect the profession versus organized to protect the public? Montana pharmacists believe both roles are of critical importance.

This is becoming an increasingly complex profession to regulate. MPA believes that Montana needs a strong, active Board of Pharmacy now more than ever. Consider the following two situations, at either end of the spectrum of the Board's responsibilities:

- The Board of Pharmacy took swift, decisive action to protect the public health last year when a Canadian storefront operation began faxing prescriptions to Canadian pharmacies. An unlicensed establishment, with no pharmacist on the premises, invites senior citizens to 'come on down' where their prescriptions will be 'brokered' to Canadian doctors and pharmacies; with the medicine mailed direct to their door. This scheme was ripe with the potential for disaster: the margin for human error, the opportunity for fraud, the possibility of damaged medicine due to extremes of heat or cold. The Board issued a 'cease and desist' order.
- A Billings pharmacist and former member of the Montana Board of Pharmacy pleaded not

guilty Monday (Aug. 15, 2005) in District Court to 15 felony counts of fraudulently obtaining dangerous drugs. This pharmacist had also received an award from the MPA. The Pharmacist will get a fair trial in a court of law. Whatever the outcome of that, this incident underscores the necessity for a licensure board to take very seriously the role of supervising its licensees in order to protect the public health.

In between these two widely disparate examples-- one having to do with a trusted health care provider who may have become an abuser of the drugs he dispensed to patients; the other having to do with the international flow of prescription drugs within a lax federal regulatory climate-- are any number of other equally important duties that are important to the Board's fundamental and essential role of protecting the Montana public. These examples underscore the importance of this Board; and its role of protecting the public and regulating its licensees. These twin responsibilities are equally important.

There is quite a bit of history between the Board and the Association, most of good. Following a lengthy period of dormancy, in 2001 the Board of Pharmacy hired a new Executive Director and soon after that a Compliance Specialist, or 'pharmacyinspector.' The Association welcomed this. There was a discussion between MPA and the Dept. of Labor over whether or not the new Director had to be a pharmacist--the Association believes this job must be held by a pharmacist. It is currently held by a pharmacist. There was also discussion over whether the new Director ought to be part time or full time. The Association believes the position must be full time. Currently it is part time.

Since 2001 the Board of Pharmacy has taken an active role in bringing the profession up-to-date and in line with current standards of practice around the country. Administrative Rules have been adopted in several key areas: security of pharmacy personnel and supplies; registration of pharmacy technicians; electronic prescribing and transfers of prescriptions, and others. The Association has welcomed this initiative and has supported most, if not all, of the rules proposed.

During the same time the Association and the Board of Pharmacy jointly created a program of intervention and assistance for pharmacists who may be at risk of, or actually abusing the drugs they dispense, the Montana Impaired Pharmacist Program (MIPP). This is important to the Association. It is funded jointly by MPA and the Board of Pharmacy, with each organization contributing \$5000 per year toward the program. While the program is important to the Association in terms of meeting the needs of our members, it is important to the Board of Pharmacy in terms of protecting the public health, which is arguably the higher and more significant purpose. It is going to be increasingly difficult for the Association to fund its share of the program.

Our understanding is that the current Executive Director of the Board of Pharmacy has submitted a letter of resignation. Under the provisions of HB 182, the Dept. of Labor is supposed to 'consult' with licensees as it replaces the Executive Director of a Board. MPA looks forward to that consultation and appreciates the opportunity once again share our views with the Department.

In conclusion, we have tried to provide the EAIC with some general comments at this time. There are a few specifics that we will want to address at a later date in one of the sub-group work

sessions. These include:

- 1) continuation of the program for impaired pharmacists;
- 2) investigations and enforcement, particularly the use of screening panels and adjudication panels in these proceedings;
- 3) membership composition;
- 4) administrative attachment to the DOLI.

Thanks for the opportunity to submit these comments. I regret that I am unable to attend the October 12th meeting; but will consider myself part of the work group and will look forward to subsequent meetings. If you have any questions, please do not hesitate to call.

Kindest Regards,

Jim Smith